

ESTTA Tracking number: **ESTTA184784**

Filing date: **01/07/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91172497
Party	Defendant Brice, Michael F.
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Submission	Other Motions/Papers
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Date	01/07/2008
Attachments	brice opposition motion.pdf (3 pages)(93199 bytes)

In re application Serial No. 76/635,772 for the mark HEALTHY TOOTHBRUSH published for opposition on April 25, 2006

Applicant.

Opposition No. 91172497

Sir:

Applicant was, pursuant to the Trademark Trial and Appeal Board's Notice of November 26, 2007, given to and including December 26, 2007 to respond to Opposer's discovery requests. However because of the press of other matters and the commencement of Christmas and New Year holidays, applicant on December 20, 2007, called Drinkler, Biddle & Reath LLP, Opposer's attorneys and spoke to Jaye Yung, regarding an extension of time to respond to Opposer's discovery requests. As outlined in Applicant's Extension of Time request, Ms. Yung stated she would not consent to our request but would also not oppose it. A copy of our Request was mailed to the Trademark Trial and Appeal Board on December 21, 2007, and a copy of the request was also e-mailed to Ms. Yung on the same date.

Applicant has not received any communication from Ms. Yung, or Opposer, indicating that applicant in any way misstated that Ms. Yung verbally indicated that Opposer would not oppose applicant's request for extension of time to respond to Opposer's discovery requests.

Nonetheless, on December 28, 2007 applicant filed its Motion for Entry of Sanctions and Judgment to its Favor against Applicant, Michael F. Brice. Opposer grounds its motion on Applicant's failure to timely provide responses to Opposer's interrogatories and document requests.

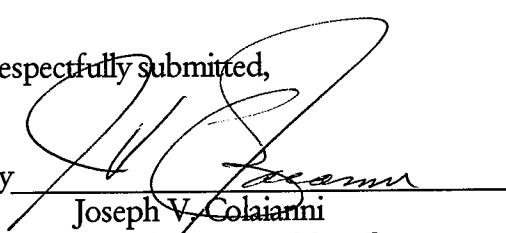
Applicant strongly urges the Board to reject Opposer's motion since to do otherwise would be improperly rewarding Opposer for questionable conduct. In particular if Opposer had insisted on Applicant filing its responses to Opposer's discovery requests by December 26, 2007 it should have told applicant that it would oppose its request for an extension of time to January 15. Ms. Yung not only did not indicate she would oppose the extension, she stated just the opposite and said she would not oppose it.

To grant Opposer's present Motion for Sanctions for Michael Brice's failure to provide responses by December 26, 2007 would be furthering Opposer's questionable conduct. Indeed, Brice did not file his response by December 26, 2007 since Johnson & Johnson stated it would not oppose his motion for extension of time to file his responses by January 15, 2008.

Thus, for the reasons fully explained hereinabove, Applicant urges that Opposer's motion for entering of sanctions and judgment in its favor should be denied and applicant's request for extension of time should be granted.

Respectfully submitted,

By



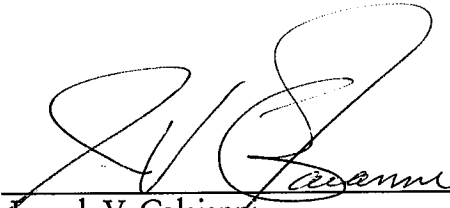
Joseph V. Colaianni
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Date: January 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR ENTRY OF SANCTIONS AND JUDGMENT IN ITS FAVOR was served on counsel for Opposer on January 7, 2008 via first class mail, postage prepaid.

Jaye S. Yung, Esquire
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Joseph V. Colaianne